

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 5-2-2019
Judgment delivered 8-3-2019

CRA No. 922 of 2008

1. Raju s/o. Jairam Ganda, aged about 25 years.
 2. Uttam s/o. Mohan Ganda, aged about 28 years.
- Both above r/o village Jogidipa, PS Saraipali, Dist. Mahasamund CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Saraipali, Dist. Mahasamund (CG).

---- Respondent

For Appellants : Mr. M.K. Sinha, Advocate
For respondent/State : Mr. V.B. Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 6-10-2008 passed by the Sessions Judge, Mahasamund, District Mahasamund (CG) in Special Sessions Trial No. 36 of 2008 wherein the said Court has convicted the appellants for commission of offence under Section 376(2)(g) of the IPC and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/- each with default stipulations.
2. In the present case, prosecutrix is PW/1. As per version of prosecution on 21-3-2008 at about 11.30 am prosecutrix

along with her friend namely Premsheela was plucking the vegetables and at that time both the appellants came there and called the prosecutrix and thereafter they started misbehaving with her. Looking to this, Prem Sheela fled away from the spot. Thereafter, both the appellants dragged the prosecutrix near canal and committed forcible sexual intercourse with her one by one. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellants would submit as under:

- i) Prosecutrix has love affair with appellant No.1 Raju but due to family pressure she has implicated both the appellants.
- ii) From the medical evidence, it has come that prosecutrix is habitual of intercourse. The prosecution witnesses have not supported the version of prosecution and no injury was found on her body which suggests that prosecutrix was consenting party.
- lii) As per version of prosecutrix she raised alarm but no one came for her rescue which cannot be relied on, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Prosecutrix PW/1 deposed before the trial Court that she was plucking vegetables at the time of incident and at the same time both appellants came there and caught hold her hand. When she cried, no one reached there for her rescue. She further deposed that her friend left the place earlier and thereafter both the appellants undressed her and committed rape on her one by one. As per version of this witness, one meeting was organized in their village where both the appellants were present. Version of this witness is supported by version of Prem Sheela (PW/2) who earlier accompanied the prosecutrix and she also deposed that both appellants reached there and caught hold the prosecutrix that is why she fled away from the spot out of fear. Version of this witness is again supported by version of Ramu (PW/3) and again it is supported by version of Dr. Aditya Kumar Sahu (PW/8) who examined both the appellants and found them

capable of intercourse. All the witnesses have been subjected to searching cross-examination but they are unshaken and there is nothing to disbelieve their testimonies. In the present case , date of incident is 21-3-2008 and report was lodged on 23-3-2008.

7. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.

8. It is true that there is delay of two days in lodging the report at Police Station. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault, cannot

be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

9. After assessing the evidence, this court has no reason to say that the appellants have been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix, and other witnesses. Delay has the effect of putting the Court on guard to search if any explanation has been offered for the delay. In the present case, prosecutrix was fearful after the incident to her husband that is why there is delay of two days in lodging the report and same is properly explained. Therefore, delay has no adverse affect in the facts and circumstances of the case.

10. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellants falls within mischief for which the trial Court convicted them and same is hereby affirmed. The trial Court sentenced them ten years for the aforesaid offence which cannot be termed as harsh,

disproportionate or unreasonable. Sentence part is also not interfered with.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As both the appellants are reported to be in jail, therefore, no further order for their arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju